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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/756,411	01/08/2001	Franco Lori	NIH061.ICP1C2	5460

45311 7590 09/20/2005

Knobbe, Martens, Olson & Bear, LLP
2040 Main Street
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Irvine, CA 92614

EXAMINER

CRANE, LAWRENCE E

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. 09/756,411	Applicant(s) LORI ET AL.	
Examiner L. E. Crane	Art Unit 1623	

Status of Application:

(3) _____.

(4) _____.

Time:

☐ Telephonic
☐ Video Conference
☒ Personal (Copy given to: ☐ Applicant ☐ Applicant's representative)

Part I.

All of record

All of record, claim 20 in particular

Balzarini (PTO-892 ref. ZB)

SUBSTANCE OF INTERVIEW DESCRIBING THE GENERAL NATURE OF WHAT WAS DISCUSSED:

See Continuation Sheet

☐ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the Notice of Allowability.

☒ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview did not result in resolution of all issues. A brief summary by the examiner appears in Part II above.

(Applicant/Applicant's Representative Signature – if appropriate)

Continuation of Substance of Interview including description of the general nature of what was discussed:

A personal Interview occurred on September 12, 2005 with Nancy W. Vensko in re the application 09/756,411. Examiner explained what the provisional Pre-Appeal Brief Review Program amounts to in practice.

Applicant's representative argued that the declaration of Dr. Vila filed February 27, 2003 was supportive of the instant application's claims. Also arguments in support of the instant claims were made citing Balzarini (PTO-892 ref. ZB). Applicant's representative expressed the view that examiner must have met Balzarini, an impression corrected by examiner. Examiner then briefly summarized the main reason why the PTO Board decision Ex parte Balzarini was decided as it was. Then applicant's representative argued that the declaration of applicant Lori filed August 17, 2004 was supportive of the instant application's claims. Applicant's representative then argued that the instant claims were patentable based on the argument that the prior decision In re Hogan (no cite) also provides an opportunity to apply post-filing-date prior art to support extension of the instant claims with the limitation that the newly cited art "... must confirm predictions of a fully enabled patent application." Examiner and applicant's representative also discussed the breadth of terminology with particular reference to the functional terminology in claim 20.

Examiner's view was that all of applicant's arguments were not convincing because applicant had failed to provide the additional data necessary to enable a scope of claim coverage greater than that already provided by the Malley et al. patents. Examiner encouraged applicant's representative to provide any and all additional testing data available in the form of a declaration to be filed under 37 C.F.R. §1.132. Examiner also encouraged applicant to initiate or to continue experimentation to determine whether a test might exist to accurately establish whether a particular host is, or is not, an appropriate subject for the Malley et al. method of HIV treatment.

No agreement was reached concerning final disposition of this case. .